

N.D.A.G. Letter to Hanson (June 6, 1988)

June 6, 1988

Hon. Robert E. Hanson
State Treasurer
Office of State Treasurer
State Capitol
Bismarck, ND 58505

Dear Mr. Hanson:

Thank you for your May 13, 1988, letter concerning certain court administration fees recently paid to the state by the Stutsman County Auditor's Office.

The 1987 Legislature amended N.D.C.C. § 29-26-22 to permit courts to assess a court administration fee in lieu of court costs. N.D.C.C. § 29-26-22 provides:

29-26-22. Judgment for fines, costs, and court administration fee -- Statement to be filed by court -- Docketing and enforcement. In all cases of conviction, a court administration fee of up to twenty-five percent of the maximum allowable fine for the offense may be taxed against the defendant in lieu of the assessment of court costs. If the court does assess costs as part of its sentence, the court shall include in the judgment the facts justifying the amount assessed. When a fine is imposed and suspended or the imposition of a sentence is suspended pursuant to chapter 12-53, the court administration fee may be taxed against the defendant and twenty-five percent of the fee collected must be added to the fund for the maintenance of common schools pursuant to section 2 of article IX of the Constitution of North Dakota. A judgment that the defendant pay a fine, costs, or court administration fee, or any combination thereof, may be docketed, and thereafter constitutes a lien upon the real estate of the defendant in like manner as a judgment for money rendered in a civil action. The court may allow the defendant to pay any assessed costs or administrative fee in installments. When a defendant is assessed costs or administrative fees, the court may not impose at the same time an alternative sentence to be served if the costs are not paid.

The effective date of the 1987 amendment authorizing the assessment of court administration fees was January 1, 1988. See 1987 N.D. Sess. Laws ch. 74, § 4; 1987 N.D. Sess. Laws ch. 394. § 1.

After I received your letter, I received a letter from the Stutsman County Court Judge concerning the fees in question. A copy of that letter is attached.

According to your letter and the county judge's letter, the Stutsman County Court began to assess court administration fees against criminal defendants in August, 1987. This apparently was the result of an oversight regarding the January 1, 1988, effective date of the amendment authorizing assessment of the fees. (The Legislature passed the delayed effective date as part of a separate bill; the delayed effective date was not included in the original bill that contained the amendment. See 1987 N.D. Sess. Laws ch. 74, § 4; 1987 N.D. Sess. Laws ch. 394, § 1.) Stutsman County has now deposited with your office the court administration fees it collected between August, 1987, and January 1, 1988. Your question is how your office should dispose of those funds.

If, as it appears, the county court assessed a court administration fee as part of a criminal defendant's sentence before January 1, 1988, that sentence could be considered to be illegal.

Yet, the authority to determine whether a sentence is illegal and to correct an illegal sentence lies solely in the courts. N.D.R. Crim. P. 35 Provides:

(a) Correction of Sentence. The sentencing court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

See also State v. Nace, 371 N.W.2d 129 (N.D. 1985). Neither this office nor the State Treasurer has any authority to determine whether a criminal sentence in any particular case is illegal or to "correct" any sentence we believe to be illegal.

Therefore, until a court has determined that a criminal sentence is illegal, we must presume that it is legal. Your office should, therefore, treat the moneys collected from Stutsman County as if they were legally assessed and deposit the funds in the state's common school trust fund.

You should be aware, however, that the trial court may at some later date decide that the criminal sentences at issue here are illegal and take action to correct those sentences. The moneys in question may or may not have to be repaid to Stutsman County if that happens.

For example, if the court were to correct these sentences and change the designation of the money assessed against the criminal defendants from court administration fees to court costs, the county could seek the return of the court administration fees previously paid to the state, and the state could then be required to repay those funds to the county. See Stark County v. State, 160 N.W.2d 101 (N.D. 1968).

The letter from the Stutsman County Court, however, indicates that the judge assessed the court administration fees in the cases involved here in lieu of fines. If the court were to correct these sentences and designate the money assessed against the criminal defendants as fines instead of court administration fees, those funds (now called fines) would remain in the state's common school trust fund, because all fines must be

deposited in that fund, see N.D. Const. art. IX, 2; N.D.C.C. § 29-27-02.1.

In any case, it is premature at this time to decide how the state should respond if the sentences at issue here are corrected at some point in the future. For now at least, your office should retain the funds received from Stutsman County and deposit them in the state's common school trust fund as required by the law.

I hope this has been of assistance to you.

Sincerely,

Nicholas J. Spaeth

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Enclosure